

FREQUENTLY ASKED QUESTIONS

Does the Public Service Commission regulate all municipal utilities?

No. Municipal utilities are generally exempted from the Public Service Commission's jurisdiction. The Commission regulates only the rates and service aspects of a municipal utility's provision of wholesale utility service to public utilities. If a municipal utility provides utility service to retail customers only and not any public utility, it is not subject to Commission regulation.

What portion, if any, of a municipal utility's operations does the Public Service Commission regulate?

The Public Service Commission regulates only a municipal utility's sales of utility service to public utilities.

Does the Public Service Commission regulate a municipal utility's utility sales to other municipal utilities?

No. If a municipal utility provides wholesale utility service to another municipal utility, [that service is not subject to Commission regulation.](#)

Does the Public Service Commission regulate a municipal utility's provision of retail utility service to persons who are located outside a city's boundaries?

No. Between 1948 and 1961, Kentucky's highest court held in [several decisions](#) that the Public Service Commission had jurisdiction over a municipal utility's service to persons residing outside the city's boundaries. In 1961 the Court [reversed these decisions](#) and has since consistently held that such service is exempted from the Commission's jurisdiction.

When did the Public Service Commission begin regulating a municipal utility's provision of utility service to public utilities?

On January 31, 1994 the Kentucky Supreme Court held in [*Simpson County Water District v. City of Franklin*](#), 872 S.W.2d 460 (Ky. 1994), that when a city contracts to provide water service to a water district or other public utility, it waives its exemption from Public Service Commission regulation and its transactions with the water district or other public utility are subject to Commission regulation. On August 10, 1994, the [Commission ordered each municipal utility](#) that provides wholesale utility service to a public utility to file a schedule of its wholesale rates and a copy of its wholesale contracts with the Commission.

What is a "public utility"?

The statutory definition of utility is found in [KRS 278.010\(3\)](#). Generally, [water districts](#), [water associations](#), and private corporations that provide water service or sewer collection or

treatment service to the public for compensation are utilities. [Joint water source commissions, sanitation districts](#), joint sewer agencies and cities are not utilities.

Does a municipal utility that provides utility service to a public utility have to obtain a certificate of public convenience and necessity before constructing utility facilities?

No. [KRS 278.020\(1\)](#) requires a public utility to obtain a certificate of public convenience and necessity from the Public Service Commission before constructing utility facilities. This statute [does not apply to a municipal utility](#) even if the municipal utility provides utility service to a public utility.

Does the Public Service Commission have the authority to resolve service territory disputes between public utilities and municipal utilities?

No. In [City of Georgetown v. Public Service Commission](#), 516 S.W.2d 842 (Ky. 1974), Kentucky highest court held that the Public Service Commission has no authority to resolve boundary disputes between a city and a public utility.

If a municipal utility is currently providing utility service to a public utility, what documents should it have on file with the Public Service Commission?

The municipal utility should have on file with the Public Service Commission a copy of its most recent wholesale water contract with the public utility and a rate schedule that indicates the rate that it is currently charging for wholesale water service.

What if the municipal utility does not have these documents on file with the Public Service Commission?

It should immediately file the documents with the Public Service Commission with a written explanation for its failure to make the filing earlier. A municipal utility that fails to file its contracts or wholesale rate schedules with the [Commission may be required to refund all amounts billed and collected in excess of its filed rates](#).

[KRS 278.160\(1\)](#) requires a utility to file with the Public Service Commission schedules showing all rates and conditions of service. (A contract is considered as a rate schedule.) [KRS 278.160\(2\)](#) limits a utility to billing and collecting only those rates that are in its filed rate schedule. Courts and the Commission have interpreted these statutes as prohibiting a utility from charging a rate that is not on file with the Commission and requiring the utility to refund any amounts collected that are in excess of its filed rates.

The Public Service Commission has held that municipal wholesale rates that were in effect prior to January 31, 1994 do not require Commission approval.

What actions must a municipal utility take if it renegotiates its contract to provide water or sewer service to a public utility?

A municipal utility may renegotiate its wholesale water contracts at any time. Once the contract has been renegotiated and a new contract or an amendment to the existing contract has been executed, the municipal utility should file with the Public Service Commission a copy of the new contract or amendment. The new contract or amendment will not become legally effective until it has been filed with and accepted by the Commission.

What actions must a municipal utility take to change or adjust its rate for wholesale service to a public utility?

A municipal utility must notify its wholesale customers and the Public Service Commission the proposed rate change. Notice to the Commission is given by filing a rate schedule with the Commission **at least 30 days before the rate is to become effective**. A municipal utility should notify its wholesale customer in writing of the proposed rate change when it notifies the Commission.

How much notice must the municipal utility provide to the Public Service Commission before it may adjust its wholesale rate?

KRS 278.180(1) requires thirty days prior notice to the Public Service Commission before the rate is scheduled to take effect. The Commission can reduce this notice period to twenty days for good cause.

What are the consequences of failing to provide adequate notice of the proposed wholesale rate adjustment to the Public Service Commission?

If a municipal utility fails to provide adequate notice of the proposed wholesale rate adjustment or change, it may not place the rate into effect.

What should the notice of a rate change that a municipal utility provides to a wholesale customer contain?

Administrative Regulation 807 KAR 5:001, Section 10(4), addresses the contents of the customer notice. Generally, the notice must contain the following:

(1) The present and proposed rates to each wholesale customer that is a public utility and to whom the proposed rates would apply and the effect upon the average bill for that wholesale customer.

(2) A statement that the rates contained in the notice are the rates proposed by the municipal utility, but that the Public Service Commission may order rates to be charged that differ from the proposed rates.

(3) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days

after publication or mailing of this notice of the proposed rate changes request to intervene; intervention may be granted beyond the thirty (30) day period for good cause shown.

(4) A statement that any person who has been granted intervention by the commission may obtain copies of the rate application and any other filings made by the utility by contacting the utility through a name and address and phone number stated in this notice.

(5) A statement that any person may examine the rate application and any other filings made by the utility at the main office of the utility or at the commission's office indicating the addresses and telephone numbers of both the utility and the commission.

For a fillable copy of the notice, [click here](#).

When should a municipal utility provide this notice of a proposed rate change to its wholesale customers?

At least 30 days before the proposed effective date of the proposed rate change.

Must a municipal utility publish notice of the proposed wholesale rate change in newspapers of general circulation to provide notice to the public utility's customers?

No. The only notice that a municipal utility must provide is to its wholesale customers.

What documents should a municipal utility provide the Public Service Commission when it provides notice of a proposed change in its wholesale rate?

A municipal utility is required only to provide a signed rate schedule that sets forth the proposed wholesale rate, a copy of the notice of the proposed rate change that was provided to the wholesale customer(s), and a written statement signed by the utility's chief officer verifying the notice was mailed or personally delivered.

Commission Staff recommends that in addition to these documents, a municipal utility provide a copy of the municipal ordinance or resolution of the municipal utility's governing body that approved the proposed rate change, any studies or reports that were performed to develop the proposed rate, and any other information that describes need for the rate change and supports the level of the proposed rate change. Any written communication from the municipal utility's wholesale customers that indicate these customers do not object to the proposed rate change should also be submitted. Providing additional information on the reasons for the proposed rate change lessens the likelihood that the Commission will suspend the proposed rate for further investigation.

For a checklist of the documents that are required or recommended, [click here](#).

Is a municipal utility assessed a filing fee when it files a rate schedule or an application with the Public Service Commission?

No. The Public Service Commission does not assess any fees to apply for a rate adjustment or to file a new rate schedule.

To what mailing address should the rate schedule and other documents be mailed?

All documents should be mailed to: Executive Director, Public Service Commission of Kentucky, Post Office Box 615, Frankfort, Kentucky 40602-0615.

What actions may the Public Service Commission take once a municipal utility provides it with notice of a proposed rate adjustment?

The Public Service Commission may request additional information regarding the proposed rate change, suspend the proposed rate and initiate a formal proceeding to investigate the proposed rate, or allow the proposed rate to become effective.

Does the Public Service Commission generally suspend or investigate if the public utility does not object to a municipal utility's proposed rate adjustment?

Historically, the Public Service Commission has allowed a municipal utility's proposed rate change to take effect if the municipal utility's wholesale customers fail to object to the proposed rate change or otherwise request a Commission investigation of the proposed rate. The Commission has on occasion suspended a rate and investigated a municipal utility rate change despite the lack of any objection or request for investigation when the Commission found that proposed rate has significant implications for other utilities or was counter to Commission precedent.

May a customer of the public utility wholesale customer object to the proposed wholesale rate change? What is the significance of such objection?

Yes, a customer of the public utility may object to the municipal utility's proposed wholesale rate change. Since a change in the wholesale rate may affect the rate that the public utility charges to its customers, such customers have an interest in the proposed change in the municipal utility's wholesale rate. The Public Service Commission considers any objection or request for investigation from these customers in a manner similar to that used for objections from public utilities.

How much time does the Public Service Commission have to determine whether it should approve the proposed rate or suspend it for further investigation?

The Public Service Commission must act to suspend a proposed rate before the stated effective date of the proposed rate. Since municipal utilities and public utilities must provide the Commission with at least 30 days notice of the proposed rate change, the period is generally 30 days.

How does the Public Service Commission inform a municipal utility of the action taken on a proposed change in a wholesale rate?

If the Public Service Commission accepts the proposed rate schedule and allows the rate to become effective by operation of law, it will notify the municipal utility by letter and enclosed a copy of the proposed rate schedule stamped “EFFECTIVE”. If the Commission suspends the proposed rate schedule, it will serve a copy of the Commission Order in which it ordered the suspension of the proposed wholesale and established a formal case to investigate the rate.

How much time does the Public Service Commission have to review and act upon a municipal utility’s proposed rate adjustment once it suspends the proposed rate?

[KRS 278.190\(2\)](#) permits the Public Service Commission to suspend a proposed rate for a period of up to five months. At the end of the five months, if the Commission has not made a decision on the rate, the municipal utility may place the rate into effect **subject to refund**. If the municipal utility places a rate into effect subject to refund and the Commission eventually determines that the appropriate rate is less than the proposed rate, the municipal utility must refund to the wholesale customer the difference between amounts billed and collected under the proposed rate and those that are owed under the approved rate.

[KRS 278.190\(3\)](#) requires the Commission to render a final decision within 10 months of the date on which the municipal utility filed its proposed rate schedule with the Commission. If the Commission fails to act within this time, [the rate becomes effective by operation of law](#).

For a timeline of rate case proceedings, [click here](#).

What happens if the Public Service Commission suspends a proposed rate and establishes a formal investigation?

Generally, when the Public Service Commission establishes a formal proceeding to investigate a municipal utility’s proposed wholesale rate, it establishes a [procedural schedule for the proceeding](#). In a typical proceeding, the Commission will require a municipal utility to file written testimony with the Commission within 60 days of the initiation of the case and to provide certain documents and information about the municipal utility’s operations and finances. Based upon the municipal utility’s response to the Commission’s Order, Commission Staff will typically present the municipal utility with additional questions and requests for information about municipal utility and its operation. Opposing parties also have the right to request information from the municipal utility. (Generally, an opposing party will be the municipal utility’s wholesale customer.). Opposing parties also have the right to file written testimony to support their position on the proposed wholesale rate. The municipal utility and Commission Staff may request information from those opposing parties that present written testimony. Finally a hearing is held on the proposed wholesale rate. After the hearing, all parties may submit written briefs. The matter is then submitted to the Commission for decision.

May the municipal utility and its wholesale customers agree to a new wholesale rate while the Public Service Commission is conducting a formal investigation of the municipal utility's proposed rate?

Yes. The Public Service Commission has taken the position that if the municipal utility and its wholesale customer(s) reach an agreement and the agreed wholesale rate is neither unreasonable nor unconscionable on its face, the Commission will not conduct additional proceedings but will accept the agreed rate.

Who has the burden of proof in a Public Service Commission proceeding?

KRS 278.190(3) places the burden of proof upon the municipal utility to demonstrate that the proposed wholesale rate is reasonable.

How does the Public Service Commission determine that a proposed wholesale rate is reasonable?

The Public Service Commission first examines the municipal utility's costs to provide water service for a historical period (generally a calendar or fiscal year). It removes any unreasonable expenses and adjusts the remaining expenses to reflect known and measurable changes that have occurred since the end of the historical test period. Using this adjusted level of expenses and considering the municipal utility's outstanding debt and debt service obligations, the Commission establishes a total revenue requirement for the municipal utility. For a detailed presentation on the revenue requirements process, [click here](#).

After determining the municipal utility's total revenue requirement, the Commission then allocates that requirement among the municipal utility's retail and wholesale customers. It examines the costs that the municipal utility incurs to provide water or sewer service to each customer group and allocates the revenue requirement based upon those costs. Based upon these cost allocations and revenue requirements, rates are then established for each group to generate the assigned revenue requirements. For a detailed presentation on the cost allocation process, [click here](#).

Does the Public Service Commission examine the reasonableness of a municipal utility's retail rates?

No. The Public Service Commission's assignment of costs and revenue requirements is used only to determine a reasonable wholesale rate. The Commission does not examine or make any findings about the reasonableness of a municipal utility's wholesale rates.

If a municipal utility disagrees with the Public Service Commission's decision, may it request the Commission to reconsider?

Yes. KRS 278.400 permits a municipal utility to apply for rehearing of any Order entered in a Commission proceeding to which it is a party. An application for rehearing must be made within 20 days from date when the Order was served upon the municipal utility.

May a municipal utility seek judicial review of a Public Service Commission Order?

Yes. [KRS 278.410](#) permits a party to a Public Service Commission to bring an action for review of a Commission Order in Franklin Circuit Court. The party must bring the action within 30 days after service of the Order, or within 20 days after the Commission has denied an application for rehearing, or 20 days after service of the final order on rehearing.

If the Public Service Commission conducts a formal investigation of a municipal utility's proposed wholesale rate, may the municipal utility recover its expenses to participate in that case?

Yes. A municipal utility's reasonable rate case expenses are recoverable. Generally, [the Public Service Commission has authorized municipal utilities to assess a surcharge on its wholesale customers for a defined period to permit the recovery of reasonable rate case expenses](#). The surcharge is in addition to the wholesale water rate. Recovery of these expenses is not automatic. The municipal utility must request recovery of these expenses during the Commission proceeding.

Is a municipal utility permitted to use the Consumer Price Index or other pricing index to automatically adjust its wholesale rate to reflect the effects of inflation?

Not currently. No public or municipal utility has yet demonstrated to the Public Service Commission that the Consumer Price Index or other index accurately measures and reflects changes in the cost of providing water or sewer service. [The Commission has stricken provisions in several municipal utility wholesale contracts that provided for automatic adjustments based upon the Consumer Price Index because of the proponent's failure to demonstrate the reasonableness of the index.](#)

If a municipal utility desires to impose a system development charge on a public utility wholesale customer, does it follow the same procedures described above?

No. [Administrative Regulation 807 KAR 5:090](#) sets forth a different procedure that must be followed. Municipal utilities and public utilities must file an application with the Public Service Commission. They cannot merely file a rate schedule setting forth the proposed system development charge.

Does the Public Service Commission's jurisdiction also extend to service related issues between a municipal utility and its wholesale customers?

Yes. [Service](#) includes any practice or requirement in any way relating to the municipal utility's service, including the purity, pressure, and quantity of water.

If a municipal utility desires to change a term of the wholesale contract related to rates or service and the public utility refuses to agree, may the municipal utility amend the contract terms by filing a rate schedule with the Public Service Commission that contains those terms?

Yes. In *Board of Education v. William Dohrman, Inc.*, 620 S.W.2d 328 (Ky. 1981), the Kentucky Court of Appeals held that, no matter what a contract provided, the Public Service Commission had the right and duty to regulate the rates and services of utilities and could amend terms in a contract for utility service that related to rates or service. If a municipal utility desires to impose a condition of service or a rate that differs from the wholesale contract's terms, it may file a rate schedule with the Commission that implements that rate or condition of service. As the proponent of the amended rate or condition of service, the municipal utility has the burden of demonstrating that the amendment is fair, just and reasonable.

Wholesale customers have the same right. KRS 278.260 and KRS 278.280 permit wholesale customers to file complaints with the Commission to amend existing rates or conditions of service. When a wholesale customer files a complaint with the Commission, it has the burden of proof to demonstrate that the requested amendment is reasonable.

What are examples of conditions of service that could be amended?

Some examples include maximum or minimum supply or purchase requirements, reporting requirements, required participation in planning activities, the level of disinfectants in purchased water, penalties when maximum supply requirements are exceeded, and advanced notice requirements for proposed rate changes.

Is a municipal utility required to pay an assessment to the Public Service Commission?

No. KRS 278.150 requires public utilities to pay an annual assessment to the Public Service Commission, based upon their annual revenues, to pay for the Commission's operations. Municipal utilities are not currently required to make such payments.

If I have additional questions, who can I contact to obtain additional information?

For a list of Commission staff members who will respond to questions regarding Commission procedures, their telephone numbers, and e-mail addresses, [click here](#).